

AMENDED IN SENATE MARCH 27, 2006

**SENATE BILL**

**No. 1492**

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**Introduced by Senator Speier**

February 23, 2006

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An act to add ~~Section 9884.20 to the Business and Professions Code, and to add Section 1874.88~~ *Section 758.6* to the Insurance Code, relating to automotive repair.

LEGISLATIVE COUNSEL'S DIGEST

SB 1492, as amended, Speier. Automotive body repair: insurance claims.

The Automotive Repair Act provides for registration and licensing of automotive repair dealers by the Bureau of Automotive Repair in the Department of Consumer Affairs. Existing law prohibits automobile insurers from requiring an insured to repair an automobile at a particular automotive repair dealer, and imposes various requirements on insurers in that regard and with respect to other related matters.

~~This bill would require an auto body repair dealer regulated by the bureau to submit information annually to the bureau regarding the street rate, as defined, charged for repairs of a vehicle at the dealer's shop. The bill would require the bureau to annually produce a report organizing the street rates submitted by dealers by ZIP Code, and to transmit that report to the Department of Insurance. The bill would require that department to make this information available to the public on its Web site and as otherwise appropriate. The bill would require the bureau to occasionally verify the information provided by dealers, and would provide for the imposition of civil penalties on dealers for certain associated violations.~~

~~This bill would also require the Department of Insurance to use the average street rate for a ZIP Code, as reported by the bureau, to attempt to resolve disputes between insurers and claimants over the reasonable cost of repairing a vehicle. The bill would enact other related provisions.~~

*This bill would provide that a claimant may present to an insured 3 or more written estimates of repair of a vehicle from licensed auto body repair dealers chosen by the claimant. If the average of these estimates is accepted by the insurer, a rebuttable presumption that that amount is fair and equitable for the purposes of examinations would be created. If the average is not accepted by the insurer, a rebuttable presumption that the average is fair and equitable in a small claims action filed by the claimant would be created.*

*This bill would also provide that a claimant may offer to settle a claim for repair based on one or 2 estimates, as specified, however, no rebuttable presumption for an examination or small claims action would be raised.*

*This bill would further provide that a claimant is not required to present 3 or more written estimates for the purposes of determining a fair and equitable settlement amount.*

Vote: majority. Appropriation: no. Fiscal committee: ~~yes~~ no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 758.6 is added to the Insurance Code, to  
2     read:  
3     758.6. A claimant may present to an insurer three or more  
4     written estimates of repair of a vehicle from licensed auto body  
5     repair dealers chosen by the claimant. The average cost of repair  
6     across all of the written estimates, if accepted by the insurer,  
7     shall create a rebuttable presumption that the offer of settlement  
8     in the amount of the average is fair and equitable for purposes of  
9     examinations conducted pursuant to Section 790.04 and, if not  
10    accepted by the insurer, for purposes of any cause of action filed  
11    in small claims court by the claimant. Nothing within this section  
12    shall preclude a claimant from offering to an insurer an amount  
13    in the fair settlement of a claim based upon one or two written  
14    estimates of repairs from licensed auto body repair dealers of the  
15    choice of the claimant, but no rebuttable presumption of a fair

1 *and equitable offer of settlement shall attach to such estimates*  
2 *for purposes of the examinations conducted pursuant to Section*  
3 *790.04 or for purposes of a cause of action filed in small claims*  
4 *court by the claimant. Nothing within this section shall compel a*  
5 *claimant to present, for purposes of determining a fair and*  
6 *equitable settlement amount, three or more written estimates of*  
7 *repair.*

8 ~~SECTION 1. The Legislature hereby finds and declares all of~~  
9 ~~the following:~~

10 ~~(a) It is generally accepted that a fair insurance claim~~  
11 ~~settlement is one that puts a claimant back into the position that~~  
12 ~~he or she was in prior to the loss.~~

13 ~~(b) The typical claimant is unlikely to receive any significant~~  
14 ~~discount from posted hourly rates at an auto body repair dealer~~  
15 ~~because the typical claimant is not a repeat customer of a dealer~~  
16 ~~or possessed of other unusual characteristics that would generally~~  
17 ~~result in a dealer extending a significant discount from posted~~  
18 ~~hourly rates to a claimant.~~

19 ~~(c) The transaction of an auto body repair should be viewed~~  
20 ~~from the perspective of a claimant as described in subdivisions~~  
21 ~~(a) and (b) when determining how to put a claimant back into the~~  
22 ~~position that he or she was in prior to the loss.~~

23 ~~(d) Claimants, due to their lack of general experience with~~  
24 ~~auto body repairs, generally lack the information needed to know~~  
25 ~~whether they are being offered a fair settlement of an auto body~~  
26 ~~repair and are often heavily reliant on information provided by~~  
27 ~~auto body repair dealers and insurers to determine if a fair offer~~  
28 ~~of settlement is being made.~~

29 ~~(e) For purposes of helping to determine what constitutes fair~~  
30 ~~claims settlement between claimants and an insurer, claimants~~  
31 ~~would benefit from additional information about labor rates that~~  
32 ~~are typically charged by auto body repair dealers in a given ZIP~~  
33 ~~Code, if provided from an unbiased source of information.~~

34 ~~(f) Some insurers have been demanding that claimants pay any~~  
35 ~~amount per hour in excess of the insurer's proposed hourly labor~~  
36 ~~rate, thereby imposing substantial economic hardship on those~~  
37 ~~claimants who agree to pay for the additional costs of a repair or~~  
38 ~~forcing those claimants who cannot pay into costly and time~~  
39 ~~consuming claims settlement negotiations.~~

1     ~~(g) Efficient and fair enforcement of California laws~~  
2     ~~necessitates a benchmark number from which a fair offer of~~  
3     ~~settlement may be calculated using unbiased evidence collected~~  
4     ~~from the free market.~~

5     ~~(h) The calculation of this benchmark will enhance protection~~  
6     ~~of claimants, protect them from economic damage when unfair~~  
7     ~~offers of settlement are made, and help to ensure the fair~~  
8     ~~application of the law by protecting both claimants and insurers~~  
9     ~~against attempts to knowingly increase the costs of claims~~  
10    ~~beyond those costs that are reasonably necessary to effectuate~~  
11    ~~fair settlement of claims.~~

12    ~~SEC. 2. Section 9884.20 is added to the Business and~~  
13    ~~Professions Code, to read:~~

14    ~~9884.20. (a) An auto body repair dealer shall submit to the~~  
15    ~~bureau the street rate charged for repairs of a vehicle during the~~  
16    ~~prior 12-month period, as calculated pursuant to subdivision (b).~~  
17    ~~This information shall be submitted with the annual application~~  
18    ~~for registration with the bureau.~~

19    ~~(b) “Street rate” shall mean the hourly labor rate posted by the~~  
20    ~~dealer for viewing by the public, provided that the cost of repair~~  
21    ~~estimates for jobs completed by the dealer’s shop generally~~  
22    ~~reflect the posted hourly labor rate. A cost of repair estimate for~~  
23    ~~jobs completed by the shop shall be deemed to generally reflect~~  
24    ~~the posted hourly labor rate if the estimate uses an hourly labor~~  
25    ~~rate that is at least 90 percent of the posted hourly labor rate in~~  
26    ~~existence at the time the estimate was made. In order for a~~  
27    ~~dealer’s street rate to be used by the bureau in the calculation of~~  
28    ~~the average street rate in a ZIP Code, as set forth in subdivision~~  
29    ~~(c), 90 percent or more of the cost of repair estimates used to~~  
30    ~~calculate the dealer’s street rate must be at or above 90 percent of~~  
31    ~~the posted hourly labor rate in existence at the time the estimate~~  
32    ~~was made. Cost of repair estimate agreements between the dealer~~  
33    ~~and an insurer or any commercial entity may be used to calculate~~  
34    ~~the street rate for a shop provided the hourly labor rate actually~~  
35    ~~charged pursuant to an agreement between an insurer or~~  
36    ~~commercial entity is at least 90 percent of the posted hourly rate~~  
37    ~~of the dealer. If the dealer changed its posted hourly labor rates~~  
38    ~~during the prior 12-month period, a street rate shall be calculated~~  
39    ~~for each time period in which hourly labor rates were applicable~~  
40    ~~and the street rate reported to the bureau shall be an average~~

1 weighted by the number of months in which the street rate was  
2 applicable.

3 (e) If the street rate cannot be calculated for a shop using the  
4 standards set forth in this section, the shop shall be excluded  
5 from the calculation of an average street rate by ZIP Code, as  
6 described in subdivision (e), but the shop shall have met its duty  
7 to submit its street rate to the bureau provided it has otherwise  
8 complied with this section.

9 (d) The bureau shall, from time to time as it deems necessary,  
10 compare the street rate submitted by a dealer with the evidence  
11 used to calculate the street rate submitted by the dealer to ensure  
12 that the evidence supports the information submitted to the  
13 bureau. A dealer shall not refuse to give the bureau invoices and  
14 other information deemed necessary by the bureau to validate the  
15 street rate submitted by the dealer and a refusal to provide this  
16 information shall subject the dealer to the imposition of a civil  
17 penalty of one thousand dollars (\$1,000) by the bureau. The  
18 knowing submission of a street rate that is not justifiable  
19 pursuant to subdivision (b) shall result in the bureau excluding  
20 the street rate of the shop from the calculation of an average  
21 street rate for a ZIP Code pursuant to subdivision (e) for a period  
22 of two years and shall result in a civil penalty imposed by the  
23 bureau of up to one thousand dollars (\$1,000). Inadvertent or  
24 simple mistakes of calculation in the development of the street  
25 rate by a shop shall not be grounds for exclusion from the ZIP  
26 Code survey set forth in subdivision (e) and the bureau may  
27 waive or reduce the penalty for those errors.

28 (e) The bureau shall produce a report organizing street rates  
29 by ZIP Code and shall, for each ZIP Code, calculate the average  
30 hourly street rate that exists for each ZIP Code by adding the  
31 street rate of each dealer in a ZIP Code and dividing the number  
32 of dealers used to calculate the street rate. The bureau shall  
33 electronically transmit the average street rate data by ZIP Code to  
34 the Department of Insurance by January 15 of every year, and  
35 this data, as well as the names and addresses of all shops used to  
36 calculate the average street rates for a ZIP Code, shall be made  
37 available to the public via the Web site of the Department of  
38 Insurance and otherwise as deemed appropriate by that  
39 department.

1     ~~SEC. 3. Section 1874.88 is added to the Insurance Code, to~~  
2     ~~read:~~

3     ~~1874.88. (a) The department shall use the average street rate~~  
4     ~~for a ZIP Code calculated by the Bureau of Automotive Repair~~  
5     ~~pursuant to Section 9884.20 of the Business and Professions~~  
6     ~~Code, as well as any other credible evidence that is accepted by~~  
7     ~~the department, to attempt to resolve a dispute between an insurer~~  
8     ~~and a claimant over the reasonable cost of repairing a vehicle and~~  
9     ~~for purposes of its enforcement of this code. A court may use the~~  
10    ~~average street rate for a ZIP Code calculated by the bureau, and~~  
11    ~~other credible evidence, for purposes of settling a disputed claim.~~

12    ~~(b) The hourly labor rate of a repair proposed by a claimant to~~  
13    ~~an insurer based upon an estimate of repair from an auto body~~  
14    ~~repair dealer shall be presumed reasonable and fair for purposes~~  
15    ~~of claims settlement if both of the following apply:~~

16    ~~(1) The hourly labor rate on the estimate is the same or less as~~  
17    ~~the auto body repair dealer's street rate.~~

18    ~~(2) The hourly labor rate on the estimate is not more than 10~~  
19    ~~percent above the average street rate for a ZIP Code that is the~~  
20    ~~same as the ZIP Code of the auto body repair dealer that the~~  
21    ~~claimant presents as a possible source of repair.~~

22    ~~(c) Nothing in this section shall be deemed to define a labor~~  
23    ~~rate presented on an estimate of repair by a claimant to an insurer~~  
24    ~~as unreasonable or unfair if it is in excess of the presumed~~  
25    ~~reasonable and fair labor rate as provided in subdivision (b). In~~  
26    ~~evaluating whether a labor rate is fair and reasonable when it is~~  
27    ~~more than 10 percent above the average street rate in a ZIP Code,~~  
28    ~~a labor rate shall also be evaluated based upon special~~  
29    ~~characteristics of the proposed repair, including, but not limited~~  
30    ~~to, the warranty obligations of the claimant under a lease,~~  
31    ~~manufacturer specifications for gaps between body parts, heating~~  
32    ~~and cooling of metals during repair and whether or not heating~~  
33    ~~and cooling adversely impacts the crashworthiness of the vehicle,~~  
34    ~~paint matching, and assembly or disassembly of components and~~  
35    ~~any other characteristics of the repair that might reasonably be~~  
36    ~~necessary to put the claimant back into the position that the~~  
37    ~~claimant was in prior to the loss.~~